

27 MAY 2008



UNITED STATES PATENT AND TRADEMARK OFFICE

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Bereskin & Parr
Box 401, 40 King Street West
Toronto M5H 3Y2
CANADA

In re Application of	:	DECISION
SEMLYEN et al.	:	
Application No.: 10/550,759	:	
PCT No.: PCT/CA2004/000458	:	
Int. Filing Date: 26 March 2004	:	
Priority Date: 26 March 2003	:	
Attorney Docket No.: 13180-79	:	
For: DIAGNOSIS OF DISEASE BY	:	
DETERMINATION OF ELECTRICAL	:	
NETWORK PROPERTIES OF A BODY PART	:	

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed 11 March 2008 in the United States Patent and Trademark Office (USPTO). The petition is GRANTED.

BACKGROUND

On 26 March 2004, applicants filed international application PCT/CA2004/000458, which designated the U.S. and claimed a priority date of 26 March 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 07 October 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 26 September 2005.

On 26 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States. However, no fees accompanied the transmittal letter.

On 15 June 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America for failure to provide the U.S. Basic National Fee by thirty months from the earliest priority date.

On 07 August 2006, applicants filed a petition to revive under 37 CFR 1.137(b) and an assertion of small entity status

On 20 September 2006, a decision was mailed granting applicants' petition to revive under 37 CFR 1.137(b).

On 03 January 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 03 July 2007, applicants filed a petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a four month extension of time, the surcharge under 37 CFR 1.492(h), a declaration of inventors, a statement of facts by Stephen M. Beney, and a copy of an e-mail exchange with joint inventor Adam Semlyen.

On 12 September 2007, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a) without prejudice. Specifically, it was noted that factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort had not been provided.

On 11 March 2008, applicants filed the instant renewed petition under 37 CFR 1.47(a), which was accompanied by, *inter alia*, a petition/fee for a four month extension of time, a statement of facts by Milan Graovac, and a statement of facts by Ron Baker.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As noted in the decision mailed 12 September 2007, items (1), (3), and (4) have been met.

Item (2) has now been met as well.

CONCLUSION

For the reasons set forth above, applicants' renewed petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including the accordation of a 35 U.S.C. §§371(c)(1), (c)(2), and (c)(4) date of **03 July 2007**.

/Daniel Stemmer/

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For: DIAGNOSIS OF DISEASE BY DETERMINATION OF ELECTRICAL NETWORK
PROPERTIES OF A BODY PART

Dear Mr. Semlyen:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

/Daniel Stemmer/

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